

REMARKS

SUMMARY OF TELEPHONE CONFERENCE WITH EXAMINER GUIDOTTI

A telephone conference was held with Examiner Guidotti on September 10, 2007.

During the conversation, attorney for applicant indicated that, although he believed that the existing use of the term "binding slot" clearly differentiated applicant's invention from others that used "holes" drilled through the frame and that, more particularly, a "slot" was not a "hole", applicant indicated that he would be willing to introduce the alternative term "binding wedge" in an effort to further clarify the invention that applicant claims as his own. The Examiner stated that her main concern was U.S. Patent No. 6,276,022, issued to Gallacher. It was agreed that the applicant would file an "after final" response to the Office Action of 8/13/07 in which we would limit our claims as described above and that the Examiner would review it.

AMENDMENTS TO THE CLAIMS

Claims **1, 6, 7, 8, 9, 10, 12, 16, and 20** have been amended to more clearly reflect the invention claimed by the instant inventor.

CLAIM OBJECTIONS AND REJECTIONS

Rejections Under 35 U.S.C. 102(b)

In Paragraph 1, Claims **1, 3-5, 7-8, 12, 16, and 18-19** are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (USPN 6,453,503).

It is said that Chen discloses all elements of the claimed invention including an elongate handle, the handle having an upper and lower end, a forward side and a rearward side, and a periphery, wherein at least the lower end is adapted for grasping, the upper end of the handle

having a slot, the slot having a terminus that extends to the periphery of the handle upper end, wherein the handle has at least one retaining slit therein, the at least one retaining slit being proximate to the slot and having a terminus that extends to the periphery of the handle upper end, and a porous scrubbing material having an attaching cord affixed thereon, whereby the cord is adapted to pass through the slot and engage the retaining slit.

In response, and with respect to independent **Claims 1** and **16** as-amended, it should be noted that Chen has no binding wedge as that term is used herein. That is, the Examiner points to Chen's holes 46 and 47 as corresponding to applicant's slits / slots. The applicant respectfully disagrees and reiterates, and incorporates by reference, the comments offered in response to the similar rejection in the Office Action of March 14, 2007 (i.e., as set out in applicant's paper of June 14, 2007). Additionally, and in light of the claim amendments offered *supra*, it has now been made clearer – although applicant contents that it was clear enough previously – that applicant's invention differs conceptually and operationally from an invention that utilizes holes drilled through the frame as a means of holding a scrubbing element in place. More particularly, and as is clearly indicated in applicant's figures, the binding wedge that is called for in Claim 1 as-amended is an elongated opening into the body of the handle that is sized to allow engagement and retention by friction of an attaching cord therein.

The difference between a slot / wedge and a hole is more than just mere semantics. There is a clear difference in operations that results from applicant's structure as compared with Chen. Obviously, applicant's arrangement – involving as it does a binding wedge – is designed to speed the process of attaching and removing the scrubbing element. In the applicant's invention, the attaching cord can quickly be looped around and into a secure position in a continuous movement

with a single hand *without releasing the end of the attaching cord*. On the other hand, Chen's structure requires that the attaching cord be threaded through each of the holes 46 and 47. As a consequence, the scrubbing element cannot be attached to Chen's handle *unless the end of the attaching cord is released*. Said another way, it is impossible for a scrubbing element to be attached to Chen's handle in a single movement – the user must first grasp the attaching cord, thread it through hole 46 or 47, then grasp the end again after it has passed through the chosen hole 46 / 47 and pull it tight and secure it, etc. This process envisioned by Chen is, of course, time consuming and potentially tedious, depending on the relative sizes of the holes and cords.

On the other hand, the instant invention quickly and efficiently operates to secure a scrubbing element to the instant handle by, first, engaging an attaching cord of the scrubbing element to the slot that is situated near the terminus of the handle and subsequently to the binding wedge, the combined friction of the slot and wedge being sufficient to hold the scrubbing element in place – no tying is necessary. In short, according to the instant invention all of the operations necessary to secure the scrubbing element to the handle may be performed without releasing hold of the end of the attaching cord.

To be clear: a binding wedge is not a hole. When a cord is threaded through a hole in a handle, the cord is continuously enclosed on all sides by the material of the handle. However, when a cord is drawn into a binding wedge, the cord will not be completely encircled by the material of the handle.

As such, it is believed that Chen does not disclose each and every element of the claimed invention arranged as in either Claim 1 or 16. In more particular, Chen does not disclose the combination of a slot and a binding wedge taught by the instant invention and, as a consequence,

it is believed that the instant rejections of **Claim 1** and **16** under Section 102(b) are improper and should be withdrawn.

Turning next to the rejection of the dependent claims herein, it is believed that each rejection of a claim depending from either **Claim 1** or **Claim 16** as-amended should similarly be withdrawn, as the dependent claim depends from an allowable independent claim. In more particular, with respect to **Claims 3-5, 7-8, 12, and 18-19**, each of these claims as-amended now depends from a claim which requires the use of at least one binding wedge as a structure for securing the scrubbing element to the handle.

Turning next to **Claim 3**, it is said that the cord is capable of being removably attached to the scrubbing material.

In reply, Chen does not teach or suggest the use of a binding wedge / slot combination to quickly removably secure a scrubbing element to a handle, wherein the attaching cord is engaged via a binding wedge.

As such, for at least all of the reasons given above, it is believed that the instant rejection of **Claim 3** is improper and should be withdrawn.

Regarding **Claims 4 and 18**, it is said that Chen teaches the use of a scrubbing material where the scrubbing material is a mesh netting.

In reply, Chen does not teach or suggest the use of a binding wedge / slot combination to quickly secure a mesh netting to a handle via an attaching cord.

As such, for at least all of the reasons given above, it is believed that the instant rejection of **Claims 4 and 18** are improper and should be withdrawn.

Regarding **Claims 5 and 19**, it is said Chen discloses a scrubbing device wherein the upper end of the handle is outwardly flared at its terminus.

In reply, applicant would point out that Chen does not teach or suggest the use of a handle that is outwardly flared at its terminus which further contains binding wedge / slot combination to quickly secure a mesh netting to a handle via an attaching cord.

As such, for at least all of the reasons given above, it is believed that the instant rejection of **Claims 5 and 19** are improper and should be withdrawn.

Regarding **Claim 8**, it is said that Chen discloses a plurality retaining slits.

In reply, applicant would point out that Chen does not teach or suggest the use of a binding wedge / slot combination as those terms are used in the instant disclosure. More particularly, Chen utilizes holes – as opposed to binding wedges / slots – in his handle as means of affixing his scrubbing element to the handle. As has been mentioned previously, that configuration is awkward to use in that the attaching cord must be threaded through multiple holes and, for that reason, a user cannot quickly attach the scrubbing element to the handle.

As such, for at least all of the reasons given above, it is believed that the instant rejection of **Claim 8** is improper and should be withdrawn.

Regarding **Claim 12**, it is said that, at least one of the retaining slits of Chen is formed in the upper end of the handle at a shoulder of the outwardly flaring terminus of the handle.

In reply, applicant would point out that Chen does not teach or suggest the use of a binding wedge / slot combination as those terms are used in the instant disclosure. More particularly, Chen utilizes holes – as opposed to binding wedges / slots – in his handle a means of affixing his scrubbing element to the handle. As has been mentioned previously, that configuration is awkward to use in that the attaching cord must be threaded through multiple holes and, for that reason, a user cannot quickly attach the scrubbing element to the handle. Chen does not teach or suggest the use of at least one binding wedge formed in the upper end of a handle and at the shoulder of the outwardly flaring terminus of the handle.

As such, for at least all of the reasons given above, it is believed that the instant rejection of **Claim 12** is improper and should be withdrawn.

CLAIM OBJECTIONS AND REJECTIONS

Rejections Under 35 U.S.C. 103

Claims **2** and **17** stand as rejected under 35 U.S.C. 103 as being unpatentable over Chen (USPN 6,453,503) as applied to Claim 1, in view of Chang (USPN 6,370,723).

It is said that Chen discloses all elements claimed above, however does not disclose a material from which the attaching cord comprises.

Chang, though, is said to disclose a handle having porous scrubbing material fastened to it by an attaching cord (66) that comprises string (column 2, line 43).

In reply, and for at least all of the reasons presented above, it is believed that the instant rejection under Section 103 is improper and should be withdrawn.

That is, applicant believes that Chen does not, in fact, disclose each and every element of applicant's invention set out as in the claims. As is discussed above, Chen does not disclose the use of a binding wedge to grip and hold the attaching cord in place. Thus, the initial premise (i.e., that Chen fully discloses applicant's invention) is faulty and, if for no other reason, the instant rejection under Section 103 is improper and should be withdrawn.

Thus, since neither Chen nor Chang disclose – alone or in combination – applicant's invention, it is believed that the instant rejections of Claims **2** and **17** as-amended are improper and should be withdrawn.

Claims **6**, **10**, and **11** stand as rejected under 35 USC 103(a) as being unpatentable over Chen US 6,453,503 as applied to Claim 1, in view of Stenner, US 5,182,838.

It is said that Chen discloses the claimed invention including all elements mentioned previously, but is said not to include that at least one of the retaining slits has a left interior face

having a left central ridge extending outwardly and a right interior face having a right central ridge extending outwardly therefrom, the left and right ridges being in alignment with and opposing each other providing a raised surface.

It is further said that Stenner teaches a device that has a retaining slit (50) that engages an attaching cord such as a shoelace in order to non-permanently grip a cord in place.

It is still further said that it would have been obvious for one of ordinary skill in the art at the time of the invention to modify the retaining slit(s) of Chen to further include left and right central ridges as well as being lined with a non-skid material, as Stenner teaches, so that the cord can be releasably locked or held into place.

In reply, applicant would indicate that for at least all of the reasons mentioned previously it is believed that the instant rejection is improper and should be withdrawn.

That is, applicant believes that Chen does not, in fact, disclose each and every element of applicant's invention set out as in the claims as-amended. As is discussed above, Chen does not disclose the use of a binding wedge to grip and hold the attaching cord in place. Thus, the initial premise (i.e., that Chen fully discloses applicant's invention) is faulty and, if for no other reason, the instant rejection under Section 103 is improper and should be withdrawn.

Further, Stenner does not teach the use of a binding wedge of the sort described by the instant invention. More particularly, Stenner utilizes a hole – not a binding wedge – as a means of holding the shoe laces in place. As has been explained previously, after application of Stenner's apparatus, the shoelace will necessarily be completely surrounded or enclosed by the material of Stenner's cord lock 40, i.e., Stenner utilizes a hole with an internal constriction / friction mechanism. It should be noted that combining Chen with Stenner produces a scrubbing device that has holes 47 that are narrowed and /or lined with rubber.

This is not the applicant's invention.

Further, applicant believes that the instant combination is improper as Stenner is drawn from a non-analogous art. In brief, it is believed that the field of "shoe accessories" is not one that is within the inventor's field of endeavor which is related to removable scrubbing elements (e.g., *In re Wood*, 202 USPQ 171, 174 (C.C.P.A. 1979)).

Thus, for at least all of the above reasons, it is believed that Claims **6**, **10**, and **11**, depending as they do from claims believed to be allowable and the instant rejection is improper and should be withdrawn.

Claims **13** and **15** stand as rejected under 35 USC 103(a) as being unpatentable over Chen, US 6,453,503, as applied to Claim **1**, in view of Chang US 6,370,723.

It is said that Chen discloses the claimed invention, however it is said that Chen does not include a rearward side of the handle having at least one massage boss thereon.

It is further said that Chang teaches a scrubbing device that has a handle that has a rearward side having at least one massage boss thereon.

In reply, applicant believes that Chen does not, in fact, disclose each and every element of applicant's invention set out as in the claims as-amended. As is discussed above, Chen does not disclose the use of a binding wedge to grip and hold the attaching cord in place. Thus, the initial premise (i.e., that Chen fully discloses applicant's invention) is faulty and, if for no other reason, the instant rejection under Section 103 is improper and should be withdrawn.

Further, it is believed that the instant rejection is improper and should be withdrawn. Additionally, combining Chang with Chen yields a scrubbing handle with protrusions thereon

which utilizes holes in the frame – not binding wedges as is required by Claims **13** and **15** as-amended – to secure the scrubbing element thereto.

As such, it is believed that the instant rejections of Claims **13** and **15** as-amended, depending as they do from independent claims that are believed to be allowable, and further in view of the arguments presented above, are in condition for allowance and the instant rejection should be withdrawn.

Claim **14** stands as rejected under 35 USC 103(a) as being unpatentable over Chen, US 6,453,503, as applied to Claim **1**, in view of Borchers et al., US 6,510, 577.

It is said that Chen discloses the claimed invention, however it is said that Chen does not include at least a portion of the handle being covered with an exfoliation mat.

It is further said that Borchers et al. teach a scrubbing device that has both porous scrubbing material and an exfoliation mat so that a user can better exfoliate and remove dead cells from the skin while also maintaining a lather of soap.

It is still further said that it would have been obvious for one of ordinary skill in the art at the time of the invention to modify the handle of Chen to further include at least a portion of the handle being covered with an exfoliation mat.

In reply, applicant believes that Chen does not, in fact, disclose each and every element of applicant's invention set out as in the claims as-amended. As is discussed above, Chen does not disclose the use of a binding wedge to grip and hold the attaching cord in place. Thus, the initial premise (i.e., that Chen fully discloses applicant's invention) is faulty and, if for no other reason, the instant rejection under Section 103 is improper and should be withdrawn.

Additionally, applicant would note that the combination of Chen and Borchers does not yield applicant's invention. The resulting invention would be a removable scrubbing element that has an exfoliation pad on its back and that is attachable to Chen's handle. In applicant's view, taking Borchers' exfoliation element and arbitrarily applying it to Chen's *handle* is engaging in improper hindsight reconstruction of applicant's invention.

Thus, for at least all of the reasons set out above, it is believed that the instant rejection under Section 103 of Claim 14 is improper and should be withdrawn.

Claims 9 and 20 stand as rejected under 35 USC 103(a) as being unpatentable over Chen, US 6,453,503, as applied to Claims 1 and 16 respectively, in view of Sabo US D156,039.

It is said that Chen discloses the claimed invention, however it is said that Chen does not include each of the two retaining slits has a different width.

It is further said that Sabo teaches a holder for a porous scrubbing device wherein the retaining slits each have a different width, the slits being located just before the upper end of the handle is outwardly flared.

It is said that it would have been obvious for one of ordinary skill in the art at the time of the invention to modify the widths of the two retaining slits of Chen to each have a different width, as Sabo teaches.

In reply, applicant believes that Chen does not, in fact, disclose each and every element of applicant's invention set out as in the claims as-amended. As is discussed above, Chen does not disclose the use of a binding wedge to grip and hold the attaching cord in place. Thus, the initial

premise (i.e., that Chen fully discloses applicant's invention) is faulty and, if for no other reason, the instant rejection under Section 103 is improper and should be withdrawn.

Further, combining Chen with Sabo would result in an invention that utilized some combination of holes and slits, not applicant's invention.

Thus, it is believed that the instant rejections of Claims 9 and 20 are improper for all of the reasons presented previously and, as such, the instant rejections of these claims should be withdrawn.

Comments in Response to the Advisory Action of Dec. 3, 2007

In the Advisory Action of December 12, 2007 (the "Advisory Action") it is said that applicant's proposed amendment of October 22, 2007, which introduced the limitation "binding wedge" in order to clarify the scope of the claimed invention, would require the Examiner to perform further search and consideration. It is further said that "binding wedge" lacked support in the specification or drawings and could be considered to be new matter.

In reply, attorney for applicant is somewhat puzzled by examiner's statement that the term binding wedge – which clearly and unambiguously describes that particular feature of applicant's invention – would require the Examiner to perform an additional search. In the view of the undersigned, this is a simple invention and one that is clearly described and illustrated in the specification and figures of the instant application. It is difficult to understand what additional searching – beyond the abundantly thorough searching the Examiner performed in connection with the originally filed case – would be required.

Additionally, the Examiner's statement that applicant's "binding wedge" term lacked support in the specification or drawings is just not correct. There is ample support in the

specification that the purpose of applicant's slits are to retain or bind the attaching cord of the instant puff in place. See, for example, the language of the original specification where the "binding wedge" was referred to as a retaining slit **215**. Although, "binding wedge" was does not appear in the instant specification, applicant is entitled to rely on the plain meaning of these words used within the context of the instant application. The meaning of the term "binding wedge" as applicant has used it is clear and unambiguous: it is a slit or slot (e.g., applicants retaining slits **215** and **220**) that has one end that extends to the periphery of the handle and which permits the attaching cord (e.g., cord **130**) to be fully engaged with / secured to the handle of the instant invention without releasing the end thereof.

The term "binding wedge" was discussed with the Examiner before it was introduced (see summary of the telephone conference of September 10, 2007 in applicant's paper of October 22). The sole purpose for introducing that language was to accommodate the Examiner's (we believe unwarranted) concerns regarding, among others, the Gallacher reference (i.e., USPN 6,276,022). Further, applicant has defined this term (acting as his own lexicographer) in a manner that is completely consistent with the teaching of the specification and drawings of the instant application. "Binding wedge" is, thus, not new matter – it is merely a clarifying term that has been fully defined by applicant for use in the instant claims.

In view of the foregoing, it is believed that no prior art reference of record contains applicant's unique combination of having a slot opening / retaining wedge combination that allows quite and secure attachment of a scrubbing device to a handle. Thus, in view of at least the foregoing, the claims offered above are believed to be in condition for allowance.

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In view of the foregoing, the applicants believe that the rejections and objections offered by the Examiner have been overcome and should be withdrawn. It is believed that the claims – both as-filed and as-amended – are in condition for allowance and should be passed to the issue branch. Early and favorable action is earnestly solicited.

Respectfully submitted,

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